IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE M.E.N.PATRUDU

WRIT PETITION No.26960 OF 2005

Between:

I.Subba Lakshmi, W/o.I.Venkateswarlu,

Aged about 42 years, Attender,

O/o.Asst. Director, District Survey &

Land Records Department, Guntur.

..... PETITIONER

AND

The Regional Deputy Director,

Survey & Land Records, Kurnool,

and another.

....RESPONDENTS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

M.E.N.PATRUDU

WRIT PETITION No.26960 OF 2005

O R D E R

(Per Sri Justice J.Chelameswar)

This writ petition is filed by the unsuccessful applicant in O.A.No.2150 of 2005 on the file of A.P. Administrative Tribunal, Hyderabad, with a prayer as follows:

> ".....Honourable Court may be pleased to issue a writ, order or direction more in the nature of Writ of Certiorari by calling for records leading upto and including the orders in O.A.No.2150/2005 with M.A.No.1247/2005, dt.06.09.2005 on the file of A.P. Administrative Tribunal and set aside the same as illegal, arbitrary and violative of Article 14, 16 of the Constitution of India and with a further direction to reinstate the petitioner with all the consequential benefits by allowing the O.A.No.2150/2005 and pass ....."

The petitioner's husband while working as Junior Assistant in the office of the District Collector, Guntur, died on 25.01.1990. The petitioner therefore made an application to the District Collector, Guntur, requesting him to provide employment to her and the same was favourably considered and the petitioner was appointed in the 2nd respondent office as an Attender w.e.f. 20.02.1992 and her probation was also declared on 20.02.1994. On 20.08.2001 the petitioner was kept under suspension on the ground that she had produced a fabricated educational certificate of having passed 8th Class for securing the employment. Admittedly, the educational qualification required under the relevant Rules for appointment as an Attender is successful passing of 8th Class. Admittedly, the petitioner passed only 5th Class and it is obvious that in a distress she must have furnished a false certificate to secure employment. After an appropriate enquiry, the 2nd respondent imposed a major penalty of stoppage of three increments with cumulative effect and the period of suspension was treated as on leave. In view of the fact that the petitioner was appointed even though she did not possess the required educational qualification, the 2nd respondent thought it fit to recommend her case to the Commissioner of Settlements, Survey and Land Records for relaxation of the requirement of the educational qualification. But, the said recommendation was rejected and directed the 1st respondent to take action under Rule 40 of APCS (CC & A) Rules, 1991. Pursuant to the said direction, the

1st respondent issued a notice dated 07.04.2005 to the petitioner to show cause as to why her services should not be terminated and after her reply, he had in fact terminated the services of the petitioner by an order dated 12.05.2005.

Questioning the said show cause notice, the petitioner filed O.A.No.2150 of 2005. During the pendency of the said O.A., the final order of termination came to be passed, and therefore, the petitioner filed another miscellaneous application viz. M.A.No.1246 of 2005 seeking amendment of the prayer in the main O.A. and the said M.A. was dismissed and hence the present writ petition.

Learned counsel for the petitioner argued that the Tribunal, while dealing with similarly situated employee in O.A.No.3816 of 2002, by an order dated 15.04.2002 directed relaxation of the requirement of educational qualification. That was also a case of compassionate appointment and the applicant therein admittedly did not possess the requisite educational qualifications. The learned counsel therefore argued that the Tribunal ought to have followed the precedent laid down in the above-mentioned O.A.No.3816 of 2002.

Heard the learned Government Pleader.

In view of the facts and circumstances mentioned above, we are of the opinion that the Tribunal was not justified in dismissing the application of the petitioner. Admittedly, the State has the necessary power to relax any specific Rule in the case of any employee or any class of employees. It is a matter of common knowledge that such a power is exercised day-in and day-out by the State in various cases. This is a case where the petitioner virtually a semi-literate person was in distress due to the death of her husband. Though no categoric finding is recorded by the Tribunal, it is the case of the petitioner that she never made a mis-representation that she had passed 8th Class when in fact she studied upto 5th Class. But, one of her uncles, who was eager to provide some financial security to the petitioner produced a certificate to the effect that she had passed 8th Class. Whether such a certificate was produced with her knowledge or not, there is no enquiry nor is there any finding recorded. Even assuming that such a certificate was produced with the knowledge of the petitioner, she was already punished by withholding the increments with cumulative effect. A further punishment of dismissal from service, in our view, would be disproportionate to the misconduct and would be too harsh on the petitioner and her children.

The eagerness and commitment of the respondents to enforce the Rule of Law in the present case while such relaxations are granted for mere asking in the cases of higher officials of the State only demonstrates the classic statement of Antole France that the Law in its “Majestic equality forbids the rich and poor alike from stealing bread and sleeping under the bridges.”

In these circumstances, we see no prejudice to the public interest in granting the relaxation of qualification such as the one required in the present case and recommended by the employer in the case of an Attender. Having regard to the nature of the duties to be discharged by the Attender, the Rule does not make any difference whether the petitioner passed 5th Class or 8th Class.

The Writ Petition is therefore allowed as prayed for. No order as to costs.

JUSTICE J.CHELAMESWAR

JUSTICE M.E.N.PATRUDU

2nd FEBRUARY, 2006

PGS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

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THE HON'BLE MR JUSTICE

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2nd FEBRUARY, 2006